

APPEAL NO. 021615
FILED AUGUST 13, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 29, 2002. The hearing officer resolved the issues in dispute by determining that the respondent (claimant) sustained a compensable injury on _____, and that he had disability beginning on September 19, 2001, and continuing through the date of the CCH, May 29, 2002. The appellant (carrier) appealed the determinations of the hearing officer on sufficiency grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. The claimant testified that on the date of injury, he injured his low back while lifting and moving two, five-gallon buckets of paint. The hearing officer opined that the medical evidence, including emergency room records, show a causal connection between the claimant's injury and his employment. In addition, the hearing officer found the claimant to be more credible than the witnesses against him, particularly with respect to the mechanism of injury. The carrier argued that the claimant was inconsistent in reporting the cause of his symptoms and that his injury, if any, may have been the result of a preexisting, or off-site, nonemployment-related, incident. As mentioned above, there was considerable testimony and argument regarding the nature of the employer's procedures regarding the reporting of employees' injuries and regarding the employer's implicit reticence to do so, given some form of built-in 'safety bonus' if no employees were injured.

As we affirm the hearing officer's compensable injury determination, we likewise affirm his disability determination. Because the hearing officer found that the claimant was unable to obtain or retain employment at his preinjury wages as a result of his compensable injury for the time frame beginning September 19, 2001, and continuing through the date of the CCH, May 29, 2002, the hearing officer did not err in determining that the claimant had disability during that time. See Section 401.011(16).

The hearing officer is the sole judge of the weight and the credibility to be given the evidence. Section 410.165(a). The hearing officer resolved the disputed issues of compensability and disability, in the claimant's favor, and the hearing officer's determination is supported by the claimant's testimony and the medical records in evidence. While the carrier argued a different interpretation of the evidence, we conclude that the hearing officer's determinations are supported by the evidence, and that they are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 001360, decided July 27, 2000.

The hearing officer's decision and order are affirmed.

The true corporate name of the carrier is **COMMERCE & INDUSTRY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICE COMPANY
800 BRAZOS STREET, SUITE 750, COMMODORE 1
AUSTIN, TEXAS 78701.**

Gary L. Kilgore
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Susan M. Kelley
Appeals Judge